

D.T.E. 97-103

Investigation by the Department of Telecommunications & Energy on its own motion concerning (1) designation of eligible telecommunications carriers, pursuant to § 102 of the Telecommunications Act of 1996 ("Act"); (2) participation in the Federal Communications Commission's ("FCC's") modified Lifeline program and acceptance of increased federal funding, pursuant to 47 C.F.R. §§ 54.400-54.417 et seq.; and (3) participation in the FCC's program for discounted intrastate rates for telecommunications services for rural health care providers, pursuant to § 254(h) of the Act.

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## I. INTRODUCTION

On December 8, 1997, the Department of Telecommunications & Energy ("Department") opened an investigation concerning certain actions that the Department is required to take before January 1, 1998 to implement new federal universal service policies in Massachusetts. See Universal Service, D.T.E. 97-103 (1997) (Vote to Open Investigation). The Order identified for examination the following issues: (1) designation of eligible telecommunications carriers ("ETCs"), pursuant to § 102 of the Telecommunications Act of 1996 ("Act"); (2) participation in the Federal Communications Commission's ("FCC") modified Lifeline program and acceptance of increased federal funding, pursuant to 47 C.F.R. §§ 54.400-54.417 et seq.; and (3) participation in the FCC's program for discounted intrastate rates for telecommunications services for rural health care providers, pursuant to § 254(h) of the Act.

In the Order, the Department directed all common carriers that sought designation as an ETC to qualify for federal universal service support for 1998, to submit petitions to the Department by December 12, 1997, and to indicate the service area for which designation is sought. Id. at 6. The Department stated its intent to rule on the petitions by December 29, 1997. Id. New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic"), Granby Telephone & Telegraph Company ("Granby"), RCN-BecoCom, L.L.C. d/b/a RCN of Massachusetts ("RCN"), Richmond Telephone Company ("Richmond"), and Taconic Telephone Corporation ("Taconic") filed timely petitions for ETC designation.

The Department also stated in the Order that it intended to (1) participate in the FCC's modified Lifeline program, (2) approve an additional \$3.50 in federal support, and (3) continue state support at existing levels. Id. at 7. In addition, the Department indicated its intent to participate in the federal program for discounted intrastate telecommunications services for rural health care providers. The Department also directed interexchange carriers (except wireless carriers) and local exchange carriers to file tariffs that provide discounts on intrastate telecommunications services to qualified health care providers by December 18, 1997. Id. 7-8.

The Department sought comments on its proposals and on any ETC petitions filed with the Department. Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint PCS") filed comments addressing ETC designation only. The Attorney General of the Commonwealth ("Attorney General") filed comments concerning the Department's Lifeline proposal.

In this Order, for the reasons discussed below, the Department adopts the proposals contained in the Order opening this investigation and approves the five timely-filed petitions for ETC designation.

## II. DESIGNATION OF ETCs

### A. Federal Requirements

Under § 254(e) of the Act and the FCC's rules, only an ETC is eligible to receive federal universal service support (categorized as high cost, low income, and most rural health care) support for a designated service area. 47 C.F.R. §§ 54.201(a-b). To qualify for ETC designation, a carrier must (1) offer the services that are supported by federal universal service

support mechanisms under § 254(c), either through the use of its own facilities or a combination of its own facilities and the resale of another carrier's services (including the services offered by another ETC), and (2) advertise the availability of such services and the charges for those services using one or more media of general distribution. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). The services that are supported by federal universal service support mechanisms include: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101.

Under § 102 of the Act,<sup>1</sup> state commissions, either upon their own motion or upon request, are responsible for designating ETCs for specific service areas within their state. The FCC's rules state that "[a] service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms." 47 C.F.R. § 54.207(a). State commissions must designate service areas for non-rural carriers. However, for rural carriers, the FCC's rules state that the service areas shall be their "study areas," unless the FCC and the respective state commission jointly establish a different service area. Id. at §§ 54.207(b-e). Section 214(e)(2) of the Communications Act of 1934 states:

Upon request and consistent with the public interest, convenience, and necessity,

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<sup>1</sup> Section 102 of the Act added new Section 214(e) to the Communications Act of 1934. See 47 U.S.C. § 214(e).

the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of [subsection 214(e)(1)]. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

For carriers to be eligible to receive federal universal service support beginning January 1, 1998, state commissions must complete the designation of ETCs and their respective service areas, before that date. 47 C.F.R. §§ 54.201(a-b).

B. Summary of ETC Petitions

The Petitioners seek ETC designation for their current service areas or study areas (Bell Atlantic Petition, Atts. 1, 2; Granby Petition and Affidavit; RCN Petition and Affidavit; Richmond Petition and Affidavit; Taconic Petition and Affidavit). Granby, Richmond, and Taconic certify that they are rural telephone companies, as defined in 47 U.S.C. § 214(e)(2) (Granby, Richmond and Taconic Responses to DTE IR-1-2). The Petitioners affirm that, except for toll limitation service<sup>2</sup>, they offer or will offer by January 1, 1998, the services supported by federal universal service support mechanisms, either through the use of their own facilities or a combination of their own facilities and resale of other carriers' facilities (Bell Atlantic Petition, Atts. 1, 2; Granby Petition and Affidavit; RCN Petition and Affidavit;

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<sup>2</sup> Toll limitation includes both toll blocking and toll control. 47 C.F.R. § 54.400(d). Toll blocking is a service that permits customers to elect not to allow the completion of outgoing toll calls from their telephone. *Id.* at § 54.400(b). Toll control is a service that permits customers to specify a certain amount of toll usage that may be incurred on their telephone line per month or billing cycle. *Id.* at § 54.400(c).

Richmond Petition and Affidavit; Taconic Petition and Affidavit). According to the Petitioners, they do not possess the technology to provide toll limitation, and request a waiver until such time that the technology becomes available<sup>3</sup> (id.). The Petitioners also state their intention to satisfy fully the FCC requirement that carriers notify the public of the availability and charges of each of the services relevant to the FCC requirements for designation as an ETC (id.). Lastly, the Petitioners certify that they provide, or will provide by January 1, 1998, Lifeline and "Link Up" service for low-income customers, and that they will comply with the FCC's rules regarding those services (id.).

C. Comments

Sprint PCS argues that the Department should adopt a pro-competitive and technologically-neutral eligibility policy (Sprint PCS Comments at 2). According to Sprint PCS, the Department should ensure that its interpretation of the FCC's eligibility rules does not preclude wireless carriers from being designated as eligible to receive universal service support (id. at 4). It contends that additional criteria for wireless carriers would violate section 214(e) of the Act, and the Act's requirements of competitive neutrality and comparable access (id. at 6-9). Sprint PCS also urges the Department to adopt rules or guidelines governing application of the "public interest" standard in areas served by a rural telephone company (id. at 9-10). Lastly, Sprint PCS asserts that the Department should allow eligible carriers to designate their

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<sup>3</sup> RCN requests a waiver until the first quarter 2000, unless otherwise ordered (RCN Petition at 2-3). The other Petitioners request a waiver until such time that the technology for toll control becomes available.

own service areas for the purposes of providing universal service and obtaining support (id. at 10-11).

D. Analysis and Findings

The record demonstrates that, except for toll control, each of the Petitioners offers the services that are supported by federal universal service support mechanisms under § 254(c), either using own facilities or a combination of own facilities and resale of another carrier's services.<sup>4</sup> In addition, each advertises the availability of those services and the charges for those services using one or more media of general distribution. The FCC's rules allow a state commission to grant additional time for a carrier to complete "network upgrades" needed to provide toll limitation, including toll control, upon a finding of "exceptional circumstances." 47 C.F.R. § 54.101(c). Each of the Petitioners requests a waiver for toll control, because the central office hardware or software necessary to provide that service currently is not commercially-available. The Department finds that the unavailability of technology to provide toll control service constitutes "exceptional circumstances" under the FCC's rules, and therefore we grant the Petitioners' requests for waivers of the toll control requirement, until a reasonable

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<sup>4</sup> The FCC defines voice grade access between approximately 500 Hertz and 4,000 Hertz. 47 C.F.R. § 54.101(a)(1). Bell Atlantic states that it provides voice grade access at a frequency range of between approximately 300 Hertz and 3,000 Hertz (Bell Atlantic Petition at 2). Bell Atlantic states that the FCC is currently considering changing its definition of voice grade access to match more closely what Bell Atlantic contends is the industry standard. If the FCC does not change its definition of voice grade access, we find that for Bell Atlantic to maintain ETC status, it will be required to provide voice grade access in the higher frequency range within a reasonable period of time.

time after such technology becomes commercially-available. With the waivers for toll control, we find that the Petitioners have met the requirements for designation as ETCs, pursuant to 47 C.F.R. § 54.201(d), and satisfy the FCC's requirements for Lifeline and "Link Up" services.

Under FCC rules, states also are required to designate an ETC's service area. Id. at § 54.201(b). The FCC encouraged states to designate non-rural service areas "that are not unreasonably large" and that would "ensure accurate targeting of high cost support and ... encourage entry by competitors." Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157, at ¶184 (rel. May 8, 1997) ("Universal Service Order"). Bell Atlantic has proposed its current study area as its service area for purposes of receiving federal universal service support. The record in this case supports such a designation. Therefore, we designate Bell Atlantic's current study area as its service area, for purposes of receiving federal universal service support. However, for subsequent designations, the Department may reexamine the question of whether Bell Atlantic's service area need or should be congruent with its then current study area.

With respect to the other carriers, the record also supports a designation of their current study area as their designated service areas. Therefore, we find that the non-rural service area of RCN shall be its current study area (i.e., LATA 128), and the rural service areas for Granby, Richmond, and Taconic shall be their current study areas.<sup>5</sup>

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<sup>5</sup> Because our findings do not impede the ability of wireless carriers to obtain ETC designation and because we have approved service areas that were proposed by the carriers, we have addressed the relevant concerns raised by Sprint PCS in its  
(continued...)



For all of the above reasons, we find that it is in public interest to designate the Petitioners as ETCs. Accordingly, we hereby designate Bell Atlantic, Granby, RCN, Richmond, and Taconic, as eligible telecommunications carriers for the service areas proposed in their respective Petitions, for purposes of eligibility for federal universal service support beginning January 1, 1998. By letter dated today, the Department notifies the Universal Service Administrative Company ("USAC") and the FCC of these ETC designations (see attached Appendix A).<sup>6</sup>

### III. PARTICIPATION IN MODIFIED FEDERAL LIFELINE PROGRAM

#### A. Federal Program

In the Universal Service Order, the FCC concluded that a revised Lifeline program shall be available in all states. Universal Service Order at ¶326. In addition, the FCC increased the amount of federal Lifeline support, modified the state matching requirements, made the contribution and distribution of low-income support competitively and technologically neutral by requiring all providers of interstate services to contribute support, and allowed all ETCs (including, for example, wireless carriers) to be eligible for support, for offering Lifeline service. Id. at ¶¶326-328. The FCC held that qualifying low-income consumers in all states will receive a baseline federal support amount of \$3.50. 47 C.F.R. § 54.403(a). An additional \$1.75 in federal support is available to states that match that amount with a \$1.75 reduction in

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<sup>5</sup>(...continued)  
comments.

<sup>6</sup> The Department reminds ETCs of their obligation to provide a copy of this Order to the USAC by December 31, 1997.

the consumer's rate. Id. Furthermore, states may receive additional federal support, equal to one-half of any matching intrastate support, up to an additional \$1.75. Id. Under the FCC rules, the federal lifeline support amount shall not exceed \$7.00 per qualifying low-income consumer. Id. To accept increased Lifeline support, states are required to notify the USAC in writing of the reduction of intrastate rates by December 31, 1997. FCC Public Notice DA 97-1892 (September 29, 1997).

B. Comments

The Attorney General supports the Department's proposal to increase the Lifeline discount to \$13.00, by accepting an additional \$3.50 in federal support and continuing state support at the current \$6.00 level (Attorney General Comments at 1-3). The Attorney General urges the Department to "take full advantage of the extra federal funding which will further facilitate the development and availability of an ubiquitous Massachusetts telecommunications network which is affordable and accessible to all" (id. at 3). According to the Attorney General, increasing the Lifeline discount to \$13.00 "will allow more low-income residents to afford telephone service and existing Lifeline customers to save an additional \$3.50 per month on their phone bills" (id.).

C. Analysis and Findings

As noted in the Order opening the investigation, acceptance of the maximum \$3.50 in additional federal Lifeline support, which would increase the Lifeline discount from the current amount of \$9.50 to \$13.00, will further promote our longstanding goal of universal service. See IntraLATA Competition, D.P.U. 1731, at 21-24 (1985). For example, a Bell Atlantic

Lifeline customer will now only pay \$.41 for basic exchange service each month.<sup>7</sup> To qualify for the \$3.50 in additional federal support, under FCC rules, the Department must approve a continuation of the \$6.00 in state support for Lifeline customers. Thus, no additional state support is required. The Department's proposal has the strong support of the Attorney General, who appears before the Department on behalf of residential customers, including low-income consumers. Thus, we find that adoption of this proposal is in the public interest.

Accordingly, the Department hereby accepts \$3.50 in additional federal support and determines to continue state support at the current \$6.00 level. By letter dated today, the Department notifies the USAC and the FCC that the Department has determined to (1) participate in the modified Lifeline program, (2) approve an additional \$3.50 in federal support, and (3) continue state support at existing levels, thereby confirming that Massachusetts provides the required "matching" reduction in local service rates charged to Lifeline customers (see attached Appendix B).<sup>8</sup>

ETCs shall file any necessary revisions to their Lifeline tariff provisions by December 29, 1997, for effect January 1, 1998. On its own motion, the Department intends to waive the 30-day statutory review period to allow conforming tariffs to take effect on and from January 1, 1998. See G.L. c. 159, § 19.

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<sup>7</sup> Bell Atlantic's current basic exchange rate is \$9.91. With the \$3.50 federal subscriber line charge, Bell Atlantic's basic exchange service costs \$13.41 per month.

<sup>8</sup> As indicated in the initial Order in this docket, the Department expects ETCs to notify the USAC and FCC by December 31, 1997, concerning compliance of the carrier's Lifeline plan with FCC rules, the number of qualifying low-income customers and the amount of state assistance.

#### IV. DISCOUNTS FOR RURAL HEALTH CARE PROVIDERS

##### A. Federal Program

Section 254(h) of the Act provides that rural health care providers have access to telecommunications services at rates comparable to those available to their urban counterparts, with these discounts funded by the federal universal fund. The discounts are available to all public and non-profit health care providers, including local health departments or agencies, that are located in rural areas. Universal Service Order at ¶608. The discounts apply to any telecommunications service of a bandwidth up to and including 1.544 Mbps that is necessary for the provision of health care services. Id. In addition, rural health care providers also may receive discounts for limited toll-free access to Internet service providers ("ISPs"), regardless of where the ISP is located. Id.<sup>9</sup> The discounted services will be available to qualifying health care providers beginning on January 1, 1998.

The FCC requires that "telecommunications carriers charge rural health care providers a rate for a supported service that is no higher than the highest tariffed or publicly available rate charged by a carrier to a commercial customer for a similar service in the state's closest city with a population of at least 50,000, taking distance charges into account." Id. Carriers that provide discounted telecommunications services to eligible health care providers may recover the difference, if any, between the rate for similar services provided to other customers in

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<sup>9</sup> Rural health care providers are entitled to receive the lesser of the toll charges incurred for 30 hours of access to an ISP or \$180.00 per month of toll charges for connecting to an ISP. Universal Service Order at ¶746.

comparable rural areas of the state and the rate charged to the rural health care provider for such services." Id. To receive discounted telecommunications services, eligible rural health care providers must meet certain certification requirements and participate in a competitive bidding process administered by the Rural Health Care Corporation. Only ETCs can receive universal service support for most discounted telecommunications services to rural health care providers. 47 C.F.R. § 54.201(a)(2).<sup>10</sup>

B. Analysis and Findings

In its initial Order, the Department stated that it would facilitate the participation of rural health care providers in this federal program by requiring all carriers operating in Massachusetts to file tariffs that provide discounts on intrastate telecommunications services to qualified rural health care providers, by December 18, 1997, for effect January 1, 1998. In compliance with that directive, on December 16, 1997, Bell Atlantic filed tariff provisions, effective January 1, 1998, and requested that the Department waive the 30-day statutory tariff review period. We have reviewed Bell Atlantic's tariff filing and find the proposed language to be reasonable and appropriate. We also find there is good cause to waive the 30-day statutory notice requirement and hereby do so. Accordingly, we approve Bell Atlantic's tariff.

Because only ETCs can receive universal service support for most discounted telecommunications services to rural health care providers, we find that it would be reasonable to modify our earlier directive, such that now we will only require ETCs to file tariffs that provide discounts on intrastate telecommunications services to qualified rural health care providers. Therefore, Granby, RCN, Richmond and Taconic shall file such tariffs by January

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<sup>10</sup> Non-ETC telecommunications carriers only are eligible for universal service support for providing discounted toll services to a rural health care provider to connect to an Internet service provider. 47 C.F.R. § 54.621.

2, 1998, for effect January 15, 1998. On its own motion, the Department intends to waive the 30-day statutory review period to allow conforming tariffs to take effect on and from January 15, 1998. See G.L. c. 159, § 19. These carriers should consult with the Department's Telecommunications Division concerning appropriate tariff language. In addition, like the FCC, we encourage all carriers to notify rural health care providers in their service areas of the availability of discounted telecommunications services. See Universal Service Order at ¶731.

V. ORDER

Accordingly, after notice and consideration, it is hereby

ORDERED: That New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts; Granby Telephone and Telegraph Company; RCN-BecoCom, L.L.C. d/b/a RCN of Massachusetts; Richmond Telephone Company; and Taconic Telephone Corporation are designated eligible telecommunications carrier for their respective service areas, pursuant to § 102 of the Act; and it is

FURTHER ORDERED: That the Lifeline discount in Massachusetts shall be \$13.00 per month, which includes \$7.00 of federal support, and \$6.00 of state support; and it is

FURTHER ORDERED: That all eligible telecommunications carriers operating in Massachusetts shall file any necessary revisions to their Lifeline tariffs by December 29, 1997, for effect January 1, 1998; and it is

FURTHER ORDERED: That all eligible telecommunications carriers operating in Massachusetts, that have not already done so, shall file tariffs that provide discounts on intrastate telecommunications services to qualified rural health care providers by January 2, 1998, for effect January 15, 1998; and it is

FURTHER ORDERED: That the Petitioners comply with all other applicable directives contained herein.

By Order of the Department,

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Janet Gail Besser, Acting Chair

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John D. Patrone, Commissioner

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James Connelly, Commissioner